IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 717 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PASABHAI JOITARAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 717 of 2004

MR RC JANI for Petitioner No. 1

MS. MITA PANCHAL, APP for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 24/08/2004

ORAL JUDGEMENT

By filing instant petition under Article 226 of the Constitution of India, petitioner seeks to challenge the order dated 3.7.2004 passed in Criminal Revision Application No.122 of 2001 by the learned Sessions Judge, Mehsana, confirming the order dated 3.8.2001 passed below

exhibit 3 and 9, in Criminal Case No. 269 of 1999 by the learned JMFC, Mansa, rejecting the application filed by the petitioner for taking back the possession of the vehicle, i.e. Truck bearing registration No. GJ-2V-4732.

2. The present petitioner who is the original complainant, had filed criminal complaint under Sections 402, 420 and 504 of the IPC against the respondent No.2, therefore inquiry case No. 19 of 1998 was registered and pursuant thereto, inquiry under Section 156(3) of the Code of Criminal Procedure ('the Code' for short) was ordered by the learned Magistrate and thereafter, M Case was registered bearing No. 9 of 1998 and charge sheet was also filed. During the investigation, the Investigating Officer had recovered conscious possession of the Trucks bearing registration Nos. GJ 2V 4732 and GJ 2V 4817. Therefore petitioner had made an application before the learned Magistrate, Mansa under Sections 451 and 457 of the Code for taking back the physical possession of the said Trucks on certain terms and conditions which may be found suitable to the learned Magistrate. The learned Magistrate, Mansa has rejected the said application vide order dated 3.8.2001. Aggrieved thereby, the petitioner has filed Criminal Revision application No. 122 of 2001 before the learned Sessions Judge, Mehsana under Section 397 of the Code which also came to be rejected vide order dated 3.7.2004, which has given rise to the present petition.

3. I have considered the submissions advanced by Mr. R.C.Jani, learned advocate of the petitioner and Ms. Mita Panchal, learned APP appearing on behalf of respondent No.1 State of Gujarat.

4. At the outset, it may be stated that there is no dispute with regard to the ownership of the vehicle, i.e. Truck bearing registration No. GJ 2V 4732 which admittedly belong to the present petitioner as per the RTO records. Even before the learned JMFC, police authority has given no objection if the Truck bearing registration No. GJ 2V 4732 is handed over to the present petitioner. Both the Trucks were seized in connection with the complaint filed by the present petitioner.

5. In aforesaid view of the matter, petitioner being the owner of the said Truck being registration No. GJ 2V 4732 is entitled to get back the vehicle, i.e. Truck bearing registration No. GJ 2V 4732 during the pendency of the trial. Therefore, during the pendency of the

trial it is desirable and in the interest of justice that the possession of the Truck bearing registration No. GJ 2V 4732 be handed over to the petitioner by imposing conditions.

6. Hence, the vehicle, i.e. Truck bearing registration No. GJ-2V-4732, seized in connection with the offence registered vide M Case No. 9 of 1998 shall be returned to the petitioner by way of interim custody pending the trial on the following conditions:

(i) The petitioner shall furnish a solvent surety of an amount of Rs.5,00,000/- (Rupees Five lakhs) with personal bond of the like amount to the satisfaction of the learned JMFC, Mansa.

(ii) The petitioner shall file an undertaking before the learned JMFC, Mansa to the effect that he shall not transfer or part with the possession of the vehicle bearing registration No. GJ-2V-4732 without prior permission of the learned JMFC, Mansa and shall also produce the same as and when called for by the learned Magistrate during the trial.

7. Resultantly, the petition succeeds and accordingly it is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*